



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/781,106

02/18/2004

Bary Lyn Zeller

77009

1974

48940 7590 01/10/2007
FITCH EVEN TABIN & FLANNERY
120 S. LASALLE STREET
SUITE 1600
CHICAGO, IL 60603-3406

EXAMINER

PRATT, HELEN F

ART UNIT

PAPER NUMBER

1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
--	-----------	---------------

3 MONTHS

01/10/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/781,106

Applicant(s)

ZELLER ET AL.

Examiner

Helen F. Pratt

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-27, 29-32 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-14, 22-27, 29-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Lederman (US 2002/0114868 A1).

Lederman discloses a method of making an amorphous water soluble calcium citrate salt as in claims 22, 24, 29 by mixing the calcium carbonate or hydroxide with water, adding citric acid at a mole ratio of from 1:2 to less than 2.5:2, at around the claimed temperature and drying the mixture to provide an amorphous water-soluble calcium citrate salt (page 2, lines 002100025). The reference discloses that various amounts of calcium stay in solution for from 5 to 202 days (page 5, Table I). The calcium citrate when reconstituted in water is clear/transparent (page 2, para. 0024). Stability of the product is shown in table I. The product can be freeze-dried or spray dried (page 3, 0026) (claim 25).

The reference discloses the use of various amounts of calcium dissolved in 8 oz of water. No haze or sediment for 2 days is seen to occur as the process has been shown. No patentable distinction is seen in 10 mg calcium per fluid ounce and the amounts of the reference in table 1, since the reference discloses more stability than claimed.

Art Unit: 1761

Nothing is seen that a water-insoluble calcium citrate salt forms as in claim 23, as the reference is to producing amorphous forms which are water soluble (0021, 0028).

Comminuting the freeze-dried calcium citrate salt into powder form is disclosed in para 0039 as in claim 26.

Spray drying is disclosed in 0039 as in claim 27.

The composition is for humans since the method as in claim 30 is to making a powder for human or animal consumption (page 11, claim 1). The further limitations have been disclosed above as to claims 30-32.

The limitations of claims 1-9 have been disclosed above.

The product of the reference can be used in health drinks, flavored beverages as in claims 10, 11, 13 (page 3, para. 0034).

Flavoring agents are disclosed in para. 0036 as in claim 12.

Water is disclosed as in claim 14 (0034).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 15-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lederman (US 2002/0114868 A1) in view of Lederman (US 2006/0251765).

Claim 15 further requires particular amounts of the US daily value of calcium and a particular amount of flavoring concentrate and particular amounts of water. Lederman '868 discloses the use of flavors in amounts within the claimed range, in 64 ounces of water. Magnesium is not excluded from the claims. Citric acid can be used in place of lactic acid (0024). A little less water is disclosed (col. 9, para. 0083, formal Ex. 0). At least 1% of the RDA is disclosed since 37 grams of the composition of A2 (0079) is used. It would have been within the skill of the ordinary worker to use additional water to make up the claimed amounts. Lederman '765 discloses making a calcium citrate composition using calcium and an aqueous acid in amounts required to produce a solution of solubilized calcium. Lederman '765 is seen to disclose the claimed amounts of calcium and acid absent a showing to the contrary, since he also makes an amorphous product. The disclosure is similar to Lederman '868 but does not disclose

Art Unit: 1761

particular ratios of calcium to citric acid. Therefore, it would have been obvious to vary the ingredients within the formula of the reference.

The limitations of claims 16-21 have been discussed above and are obvious for those reasons.

Allowable Subject Matter

Claim 28 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

H. Pratt
HELEN PRATT
PRIMARY EXAMINER
1-5-07